IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs September 21, 2009

IN RE: ALIYAH W., ET AL.

Appeal from the Juvenile Court for Knox County
No. 42803T Timothy E. Irwin, Judge

No. E2009-01063-COA-R3-PT - FILED OCTOBER 28, 2009

This is a termination of parental rights case. Victoria W. ("Mother") and Kenneth W. ("Father") had four children: Sedal (DOB: 10-17-92), Kenneth, Jr. (DOB: 9-15-94), Seth (DOB: 3-31-96), and Aliyah (DOB: 9-24-99). Following a domestic violence incident between the parents, the children were taken into protective custody. Ten months later, the Department of Children's Services ("DCS") moved to terminate Father's parental rights.[1] At the conclusion of a bench trial, the court found that each of the grounds alleged in support of the petition had been proven and ordered Father's parental rights terminated. Father appeals, challenging the trial court's determination that the evidence showed, clearly and convincingly, that grounds exist for termination and that termination is in the children's best interest. Father also contends that DCS failed to make reasonable efforts toward reuniting him with the children. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

Ben H. Houston II, Knoxville, Tennessee, for the appellant, Kenneth W.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Lindsey O. Appiah, Assistant Attorney General, Nashville, Tennessee, for the appellee, Department of Children's Services.

OPINION

I.

[1] The petition noted that termination of Mother's parental rights was being pursued through "independent proceedings." The final decree in the present case notes that Mother had surrendered her parental rights.

DCS filed a petition to terminate Father's rights in August 2008. A hearing was held over two days in March and April 2009. At that time, the children ranged in ages from 9 to 16 and had been in state custody for a year and a half. Father had been incarcerated since January 2009, but appeared at the hearing. At the outset, DCS announced a voluntary nonsuit as to the oldest child, Sedal, who had run away and was missing. The hearing thus pertained to the remaining three children – Seth, Kenneth Jr., and Aliyah (collectively "the Children").

Mother and Father were married but had lived apart for several years. They separated when Father went to prison. Upon Father's release in 2002, the Children lived mostly with him and his girlfriend. In October 2007, however, Aliyah lived with Mother and the boys lived in three different homes with "friends." On October 3, Mother and Father had a physical altercation. Mother, who was intoxicated, was taken to the hospital. While hospitalized, she tested positive for cocaine. A few days later, Father was arrested on vandalism and domestic assault charges. As a result of the incident, all four children were soon taken into protective custody, adjudicated dependent and neglected, and eventually entered foster care. By the time of the hearing, the Children had been living together in the same pre-adoptive foster home for ten months.

DCS developed a permanency plan with the goal of reuniting the Children with Father.[2] Sarah Shults, the assigned DCS case worker, reviewed the plan with the incarcerated Father and also showed him the criteria for termination of parental rights that would be applicable upon his release from confinement. By October 2008, however, adoption was added as a concurrent goal of the plan. Generally, the plan required that Father be a law abiding citizen, obtain adequate housing, address his alcohol and drug abuse problems, and comply with basic DCS guidelines, including paying child support.

When Father was released from prison in 2002, he shared an apartment with his girlfriend, Wendy Ray. In 2003, they left the apartment and rented a house in both of their names. Next, they moved to a duplex that was also leased to both of them. They were evicted shortly before the Children were taken into custody in October 2007. Since then, they have "pretty much" shared an apartment in a public housing complex that was leased to Ms. Ray's cousin. Father had lived with the girlfriend's brother for several weeks. Father and Ms. Ray said that DCS had told Father he had to get a place in his name. Ms. Ray said that Father called several low income housing places trying to get housing. Father said he did not qualify for public housing because of his felony convictions. He said the only thing keeping him from renting a privately-owned apartment or home, as he had done in the past, was "finances." Father denied that pending charges against him and Ms. Ray for vandalism in connection with removing fixtures and copper wiring from the apartment they were evicted from in 2007 was preventing him from getting another rental property. At the March hearing, Father was asked where the Children would live if they were then in his custody. Father responded that he knew a lot of people, and they would all be "probably staying with friends."

[2] A separate, but identical plan was established for each child. The statement of responsibilities for Father remained essentially the same in revised plans that followed.

Just after the Children were taken into custody, Father went through a five-day medical "detox" program through the Helen Ross McNabb Center at CenterPointe. Father reported that there was an extensive waiting period there to receive inpatient treatment. He did not attend AA or NA meetings in the interim as recommended because he found it too difficult to coordinate the meetings with his work schedule. According to Father, he never entered the inpatient treatment program because when his assigned bed space became available, he was again in jail and was forced to "start over."

In September 2008, Father went through a second detox at CenterPointe. This time, he opted to attend intensive outpatient treatment so he could continue working, but did not attend regularly, citing his lack of transportation. His attendance briefly improved after his counselor advised him that he had to attend consistently the three-hour, four times weekly sessions. Father stopped attending on October 6 and was ultimately dropped from the program. A few weeks later, he was returned to jail. The discharge summary indicated that Father was "non-compliant" with group therapy, having missed most of the sessions. The counselor concluded that Father "just didn't attend enough sessions. It was like he was forever starting." Upon his discharge from the outpatient program in October 2008, Father was "referred to Inpatient Treatment here at CenterPointe if he still wants treatment." Father attended no other substance abuse programs of record. According to Father, he chose to attend CenterPointe because the program was free of charge, unlike others he had called, and he planned to complete anger management classes and mental health programs "all at once" while there.

Father had a GED and no physical limitations. He had worked at Hunley Roofing for the past 15 years as a roofer earning $400-$500 a week, but reported that work had been somewhat sporadic in recent times. The DCS worker assigned to the children and Father, Sarah Shults, handled the case from start to finish. According to Shults, Father had consistently worked when he had not been incarcerated but had never paid child support even though she had talked with him about the importance of making good faith payments.

Father never passed any of the drug screens given by DCS. In December 2007, he tested positive for THC and opiates; in March 2008, he refused to be tested; in August 2008, he tested positive for THC, cocaine, and benzodiazepines; and in March 2009, he again refused to be tested. In addition, he incurred a tenth arrest for driving without a license, as well as a simple possession drug charge, to which he pleaded guilty.

Shults concluded that Father had essentially done nothing to regain custody of the Children. While Father visited the Children regularly, visitation was never an issue. Shults acknowledged a strong emotional bond between the Children and Father. When she discussed with him that he needed to do more as outlined in the plan's statement of his responsibilities, Father responded that he knew he "needs to get it done."

In their foster home, the Children initially displayed a lot of "sibling turmoil, . . . violence toward each other," but, at the time of the hearing below, had adjusted and were doing well with their new family, in church, and at school. According to their foster mother, Tammy A., the Children became agitated and angry following visits with their parents. She had openly discussed

the termination proceeding and its potential outcomes with them. Tammy A. and her husband were prepared to adopt the children if they became available.[3] She said the Children had therapists and would be "upset" if Father's rights were terminated, but they were prepared for this possibility. Tammy A. had no problem with Father continuing to have contact with the Children provided he set "good moral values" for them.

Father had dated Ms. Ray since 2003. As of the end of January 2009, Ms. Ray was renting her own house. She agreed that in addition to Peninsula and Bradford, Father had called other halfway houses and treatment programs and could not afford them. She said she took Father to meetings at CenterPointe when she could. Ms. Ray had signed custody of her own four children over to her mother and said she paid her mother weekly child support. She denied that she lost custody as a result of having an improper environment for her children; rather, she attributed the change in custody to a fire at their former home. According to Ms. Ray, Father first began working on his drinking problem when he attended detox for the first time in 2007. Since then, Father drank and used drugs "on and off."

Kenneth, Jr. attended the hearing and testified *in camera*. He was in the eighth grade and achieved As and Bs in school. He described his weekly to bi-weekly visits with Father as "great." He wrote to his Father in jail a few months before the hearing to ask Father to surrender his rights because he believed that this would allow Father to continue to have contact with him. He said "maybe" when asked if he believed Father could get his criminal issues and drug problems worked out. Regarding the termination hearing, Kenneth said he didn't like it, but guessed "it's the best thing for me." He was of the view that he could live comfortably with Tammy A. and her husband until he was an adult and said that he had no needs that were not being met by his foster parents.

Father told the court that he always made sure the Children went to school and received the care they needed. He loved them and did not feel it was in their best interest for his rights to be terminated because he had "raised" them and wanted to make up for the time that he had not been a good father. Father said that he had been drug-free for "over half a year" and was proud of that.

Following the hearing, the trial court ordered Father's parental rights terminated. Father timely appeals.

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[3] Tammy A. and her husband had been willing to adopt Sedal as well, but after he ran away for the first time, he informed DCS that he did not want to return to their home and they agreed it was best for him and his siblings that he not return.

II.

Father raises three issues:

> 1. The trial court erred in terminating Father's parental rights when DCS failed to prove any statutory ground for termination by clear and convincing evidence.
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> 2. The trial court erred in terminating Father's parental rights when the evidence showed that DCS failed to make reasonable efforts to reunite the Children with Father.
>
> 3. The trial court erred in terminating Father's parental rights when DCS failed to prove that termination was in the best interest of the Children by clear and convincing evidence.

III.

We employ the following standard of review in cases involving the termination of parental rights:

> [T]his Court's duty. . . is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006). The trial court's findings of fact are reviewed de novo upon the record accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. ***Id.***; Tenn. R. App. P. 13(d). In weighing the preponderance of the evidence, great weight is accorded to the trial court's determinations of witness credibility, which shall not be reversed absent clear and convincing evidence to the contrary. *See* ***Jones v. Garrett***, 92 S.W.3d 835, 838 (Tenn. 2002). Questions of law are reviewed de novo with no presumption of correctness. ***Langschmidt v. Langschmidt***, 81 S.W.3d 741, 744-45 (Tenn. 2002).

Parents have a fundamental right to the care, custody, and control of their children. ***Stanley v. Illinois***, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); ***O'Daniel v. Messier***, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995) (*rev'd on other grounds*, ***In re Swanson***, 2 S.W.3d 180 (Tenn. 1999)); ***In re Drinnon***, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). This right "is among the oldest of the judicially recognized liberty interests protected by the Due Process Clauses of the federal and state constitutions." ***In re M.J.B.***, 140 S.W.3d 643, 652-53 (Tenn. Ct. App. 2004). "Termination of a person's rights as a parent is a grave and final decision, irrevocably altering the lives of the parent and child involved and 'severing forever all legal rights and obligations' of the parent." ***Means v. Ashby***, 130 S.W.3d 48, 54 (Tenn. Ct. App. 2003) (quoting T.C.A. § 36-1-113(l)(1)). "Few consequences of judicial action are so grave as the severance of natural family ties." ***M.L.B. v. S.L.J.***, 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996) (quoting ***Santosky v. Kramer***, 455 U.S. 745, 787, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)).

While parental rights are superior to the claims of other persons and the government, they are not absolute, and they may be terminated upon appropriate statutory grounds. *See* ***Blair v. Badenhope***, 77 S.W.3d 137, 141 (Tenn. 2002). Due process requires clear and convincing evidence of the existence of the grounds for termination of the parent-child relationship. ***In re Drinnon***, 776 S.W.2d at 97. T.C.A. § 36-1-113 (Supp. 2007) is a statute governing termination of parental rights in this state. A parent's rights may be terminated only upon "(1) [a] finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and (2) [t]hat termination of the parent's or guardian's rights is in the best interests of the child." T.C.A. § 36-1-113(c); ***In re F.R.R., III***, 193 S.W.3d at 530. Both of these elements must be established by clear and convincing evidence. *See* T.C.A. § 36-1-113(c)(1); ***In re Valentine***, 79 S.W.3d 539, 546 (Tenn. 2002). The existence of at least one statutory basis for termination of parental rights will support the trial court's decision to terminate those rights. ***In re C.W.W.***, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000) (*abrogated on other grounds*, ***In re Audrey S.***, 182 S.W.3d 838 (Tenn. Ct. App. 2005)).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous decisions. ***In re C.W.W.***, 37 S.W.3d at 474; ***In re M.W.A., Jr.***, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable, ***State v. Demarr***, No. M2002-02603-COA-R3-JV, 2003 WL 21946726, at *9 (Tenn. Ct. App. M.S., filed August 13, 2003), and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. ***In re Valentine***, 79 S.W.3d at 546; ***In re S.M.***, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004); ***In re J.J.C.***, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). It produces in a fact-finder's mind a firm belief or conviction regarding the truth of the facts sought to be established. ***In re A.D.A.***, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); ***Ray v. Ray***, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001); ***In re C.W.W.***, 37 S.W.3d at 474.

IV.

A.

Father argues that none of the termination grounds found by the trial court – abandonment, substantial noncompliance with the terms of the parenting plan, and persistent conditions – were established by clear and convincing evidence. We address each ground in turn.

B.

As relevant to our review, Tenn. Code Ann. § 36-1-113(g) (Supp. 2009) provides:

> (g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and non-exclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

> (1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;
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> (2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;
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> (3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:
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> (A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
>
> (B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
>
> (C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home. . . .

C.

As relevant to the present case, Tenn. Code Ann. § 36-1-102 (2009), referenced in subsection (g)(1) of Tenn. Code Ann. § 36-1-113(g) above, provides for the termination of parental rights on grounds of abandonment as follows:

> (1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:
>
> (I) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child. . . .

In finding that Father had abandoned the Children by his willful failure to pay any child support, the trial court observed:

> [Father] did not make any contribution whatsoever toward the support of his children. On the witness stand he acknowledged that, "I know I should have made some payments," but stated that it had been a rough year. Certainly some of his income was used for bond; other monies were used to support his drug and alcohol addiction. Records from the Department of Human Services' Child Support Payment Summary show that in March 2009 the State of Tennessee intercepted a total of $2851 in federal tax refund monies due [Father]. It is apparent that he had sufficient earnings to provide support for his children and that he chose not to do so.

The proof shows that Father was aware of his support obligations. While in jail in August 2008, Father was transported to court to attend a child support hearing and ordered to pay support. He acknowledged that his case manager had advised him that he at least needed to make good faith payments. The trial court was not persuaded by Father's efforts to show that he did not have the capacity to pay child support and neither are we. On the one hand, Father insisted he could not attend AA meetings or complete his alcohol and drug abuse treatment sessions because he was always working; on the other hand, he insisted he had no money and had "not been able to pay any [support]." When asked how he thought his children would eat, Father responded, "The same way everybody else is that's broke. Food stamps." Even after Father took a month-long job doing clean-up work for "cash money" in the aftermath of Hurricane Katrina, he failed to pay any child support. Father testified as follows:

> [Q]: What happened to the money you had when you came back from Texas?
>
> [Father]: Of course, it got spent. I mean, that's been three months ago. I let my girlfriend spend it. I've spent it in here, being in jail.
>
> [Q]: You haven't been back from Texas very long. You've been incarcerated almost the whole time you've been back?
>
> [Father]: I was back probably – yeah, I wasn't back long at all. You're right. I didn't make a million dollars while I was there. I mean –
>
> [Q]: Did you spend any of that money on [the Children]?
>
> [Father]: I was incarcerated. I could not phone my children. I could not get a visit. I wrote. They didn't receive it.

The evidence does not preponderate against the trial court's finding that Father "has abandoned these children in that [Father] has willfully failed to support or make reasonable payments toward the support of the children for four (4) consecutive months immediately preceding the filing of the petition in this cause." Although the establishment of one ground alone is sufficient to support

a termination proceeding, we consider the remaining grounds of noncompliance with the permanency plan and persistent conditions.

D.

Father focuses his challenge to the finding of noncompliance on the requirement that he obtain adequate housing. He argues that (1) the housing requirement was not reasonably related to remedying a condition that led to the children's removal from the parents' custody; and (2) he made "substantial progress" toward satisfying the housing requirement and his other stated responsibilities under the plan.

Father first contends that the housing requirement was unreasonably restrictive because, as interpreted by DCS, it required him to obtain a home in his own name alone despite his criminal history. We disagree with Father's view of the record. When the children were taken into protective custody, one was living with Mother and the other three were each living with other people.[4] The permanency plan charged Father with finding "adequate" housing for him and the Children. To meet this objective, the plan specified that Father needed to provide each child a separate bed in a home free of safety hazards and permit DCS to inspect the home. Case manager Shults agreed that Father always had a place to live, but never a place of his own. She noted it was important that he have "stable" housing, but testified that this could include living with relatives or friends if Father's name was also on the lease. Shults noted that Father had continued to move from place to place and lived with different people, but had never requested that DCS check any of those locations for suitability. When they discussed the housing issue, Father always responded that he was "looking" or would look after he had paid some bills.

It is clear that the trial court did not base its finding of noncompliance on Father's failure to actually lease a property himself. Rather, the court focused on Father's obligation to obtain a place to live that was suitable for the Children. In fact, the trial court made it clear that he did not consider it mandatory that Father obtain housing in his own name. The following exchange took place during closing statements:

> [Counsel for Father]: We have taken issue with I guess the Department's definition of what is a suitable home for the children. [Father], you know, has testified – his girlfriend has testified he and the children could live with her. And the Department's objection to that was simply that [Father's] name had to be on the lease or mortgage, that was the only way to have a suitable home. We would submit that is --
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> The Court: This Court has never held that, [counsel]. The Department argues on every case that that's what it takes to complete their

[4] Father testified that he and Kenneth, Jr., were living together with a "family friend."

> permanency plan, a suitable home in his name. The Court's never held that. The Court listens to the proof in each case.

Further, Father himself testified that although his criminal record made him ineligible to obtain his own public housing, the only thing keeping him from getting a private rental, as he done in the past, was "finances." As noted earlier, Father had been able to rent at least two homes or apartments in his name despite his felony convictions. The evidence does not preponderate against the trial court's finding that the housing requirement was reasonable and was not unduly restrictive.

In the alternative, Father argues that he substantially complied with the housing requirement. We cannot agree. In our view, the fact that Father planned to move into the house that Ms. Ray rented while he was in jail does not constitute "substantial compliance" with the housing requirement. At the time of trial, Father's pre-trial bond had been revoked and he had been continuously incarcerated for nearly four months.[5] In short, while Father professed his love for his Children, which we do not doubt, and sought "another opportunity to give [the Children] a home and to be their dad," his actions did not match his words. In our view, other than making some initial phone calls or contacts, Father made no real attempt to find suitable housing for his family. Further, Father had, at times, lived in private rental properties that he leased himself in recent years despite his felony convictions. Yet he specifically pointed out only two places that he had tried to rent since the Children were brought into DCS custody. One fell through, according to Father, because he failed a background check. Father said he also looked into renting a trailer, but "[his] finances just did not allow [him] at the time to rent it." The evidence does not preponderate against the trial court's findings that Father failed to comply with the stated goal of the permanency plan that he obtain adequate housing for the Children.

Father similarly failed to comply with the other terms of the plan. Briefly summarized, he continued to encounter problems with the law. Nearly a year after the Children were removed, Father entered guilty pleas to driving without a license and simple possession of cocaine. The charges came only a few weeks after he was suspended from outpatient treatment at CenterPointe for lack of attendance. Father conceded that he had continued to drive without a license and had made no effort to obtain a license because, in his view, it would cost too much money to get his driving privileges restored. Neither did Father substantially comply with the plan's objectives that he obtain treatment for his substance abuse problems and complete classes in the areas of anger management, domestic violence, and mental health. In testifying, Father attributed his failure to complete treatment programs and classes to his work schedule, being in jail, and his lack of money.

The trial court found that Father made insignificant progress with respect to his responsibilities. Father was in jail when the Children were brought into custody and again at the time of the hearing. In the interim, he never found a suitable place for his Children to live, incurred new criminal charges and continued to drive illegally. Father made only a minimal effort to deal with his drug and alcohol issues, arguably his most significant hurdle to overcome in regaining custody of his

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[5] The record indicates Father had trials for three cases set in May and July 2009 – two for vandalism and another for a DUI charge and related offenses.

Children. He twice went through medical detox programs, but failed to follow through with either inpatient or outpatient treatment at CenterPointe despite his testimony that this was the one place where he felt he could go at no cost to him and complete all the required assessments and treatments at the same time. At the hearing, the following exchange occurred during Father's testimony:

> [Q]: You knew after August [2008] that the Department was serious about this, and you had this case pending, and you had accomplished nothing on your plan?
>
> [Father]: I will agree with that.

Again, as Father essentially conceded, he did little to nothing to meet the objectives of the permanency plan. In concluding its judgment, the court accurately chronicled Father's failures in this regard:

> The Court further finds that [Father] has failed to comply in a substantial manner with those reasonable responsibilities set out in the permanency plans related to remedying the conditions which necessitate foster care placement. He has failed miserably at staying out of jail. He has done little to address his alcohol and drug addiction or to obtain mental health treatment. He told CenterPointe that he had an "extreme" need for alcohol and drug treatment and a "considerable" need for treatment for psychological or emotional problems, yet he failed to take advantage of the treatment offered. For every failure he has an excuse; this Court isn't buying them. The Department of Children's Services made reasonable efforts to assist him. He was given alternatives; he was led to water, he just didn't drink.

The evidence does not preponderate against the trial court's findings. The ground of substantial non-compliance with the terms of the permanency plan was established by clear and convincing evidence.

E.

With respect to its finding of persistent conditions, the trial court found as follows:

> [T]he children have been removed by order of this Court for a period of six (6) months; the conditions which led to their removal still persist; other conditions persist which in all probability would cause the children to be subjected to further abuse and neglect and which, therefore, prevent the children's return to the care of [Father]; there is little likelihood that these conditions will be remedied at an early date so that these children can be returned to [Father] in the near future; the continuation of the legal parent and child relationship greatly diminishes the children's chances of early integration into a stable and permanent home;

> [Father] is in no better shape that he was on the day the children entered foster care. He was in jail then; he is in jail today. He had completed a short medical detox then, failed to follow treatment recommendations, and relapsed. The only difference now is that he attended five out-patient treatment sessions before dropping out and relapsing. He had been arrested numerous times for driving without a license yet he has made no effort to get a license and continues to drive illegally.

The conditions that led to the Children being adjudicated dependent and neglected and brought into custody – the lack of a suitable place to live, Father's recurrent unlawful behavior, and Father's drug and alcohol abuse issues – continued to exist at the time of the hearing. Father argues, however, that he was "in an excellent position to remedy these conditions at an early date." The proof does not support Father's conclusion. Again, the suitability of Father's plan to house the Children at his girlfriend's newly-rented home was not a foregone conclusion. The Children's guardian ad litem in no uncertain terms noted his objection to the Children being placed with Father and Ms. Ray. He stated:

> I'd like to address Wendy Ray. Had there by some circumstance . . . or . . . suggested even the possibility of a trial home placement with [Father] and Wendy Ray, Wendy has admitted that she doesn't have . . . her own children, and I believe I heard her testify that she had [criminal] charges [pending]. So I can assure the Court and I can assure the Department that I would not have been very much in favor of a trial home, even if [Father] had fully and completely worked this permanency plan, which I believe he is in substantial non-compliance of anyhow.

Regarding the remaining plan objectives, Father had never completed substance abuse treatment and had never passed a drug screen during the pendency of the termination proceedings. Other than completing two detox programs, the only "evidence" of his efforts to resolve his drug and alcohol dependency was Father's own assertion that at the time of the March 24 hearing, he had been drug-free for six months. In this regard, it is worth noting that Father had been continuously incarcerated since January 7. There was no attempt to attend anger management or domestic violence classes. As noted earlier, Father had no apparent plan to become a law-abiding citizen. The evidence does not preponderate against the trial court's finding that persistent conditions were established by clear and convincing evidence.

V.

We next consider whether DCS provided reasonable efforts to reunify the children with Father before pursuing termination of Father's parental rights. Tenn. Code Ann. § 37-1-166(a)(1) and (2) (2005) provide:

> (a) At any proceeding of a juvenile court, prior to ordering a child committed to or retained within the custody of the department of children's services, the court shall first determine whether reasonable efforts have been made to:
>
> (1) Prevent the need for removal of the child from such child's family; or
>
> (2) Make it possible for the child to return home.

The statute provides that the burden is on DCS to demonstrate that reasonable efforts have been made. ***Id***. at (b). "Reasonable efforts" means "the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family." Tenn. Code Ann. § 37-1-166(g)(1). "Whether DCS has used reasonable efforts in a particular case is a fact specific inquiry, and we examine such efforts on a case-by-case basis." ***State v. Hardin***, W2004-02880-COA-R3-PT, 2005 WL 1315812, at *14.

In his brief, Father generally contends that he was left to work on the responsibilities set out in the plan "without any significant assistance from DCS." He focuses on two specific objectives: that he obtain adequate housing and that he become drug and alcohol free and emotionally and mentally able to care for the Children, with the latter being demonstrated by obtaining assessments and completing all recommended treatment programs and any required classes. Father asserts that the extent of help he received from his case worker in these areas amounted to providing him with the names and numbers of service providers and potential housing locations.

The trial court found that DCS made reasonable efforts to assist Father to meet his responsibilities under the permanency plan, but that Father took no follow-up actions to achieve any of the desired goals. The trial court made the following findings:

> The permanency plan suggested that [Father] could access an assessment and treatment through Bradford, Helen Ross McNabb (Centerpointe), or Cherokee. When [Father] advised the . . . case manager that he had been unable to locate any agency that would see him for free, the case manager provided him directions on how to get the assessment done through Bradford at no cost to him. He failed to follow through, although he said he was going to do so on several occasions. Instead, he got on the waiting list for treatment back at Centerpointe. He knew the wait would be long and he knew that he should be attending AA/NA meetings in the interim but he never made any effort to do so because his "schedule" and work interfered.
>
> * * *
>
> [Father] had discussed his permanency plan requirements with the children's case manager on many occasions. When he entered

> Centerpointe, she agreed that he could accomplish the substance abuse and mental health requirements on his plan through that program and she promised to work on setting up domestic violence/anger management counseling after he had completed his intensive outpatient treatment. That never happened.

As the trial court found, the evidence clearly demonstrates the efforts that DCS made to assist Father. Shults agreed that Father had told her he could not afford to pay for the assessments, treatments or class fees that some providers charged. As a result, Shults called Bradford treatment center herself, found what Father needed to do to have an alcohol and drug assessment, and presented that information in a letter to Father. In the letter, Shults advised Father that an alcohol and drug assessment at Bradford is at no cost and although the initial drug screen normally cost $25, it "will be at no cost to you." In the alternative, Shults informed Father that he could come to the DCS office and obtain a drug screen at no cost to him. Shults specifically advised Father that an alcohol and drug assessment at Bradford would have to be scheduled by Father himself and provided him with Bradford's telephone number. Father did not follow through with Bradford, but returned for a second "detox" in September of 2008 and began an intensive outpatient program at CenterPointe. As noted, he failed to meet the attendance requirements and did not complete the program. Father had not given any reason why he could not complete his substance abuse treatment and had not requested further assistance from DCS. Although Shults also offered to provide a DCS referral and coordinate the arrangements for Father to attend a domestic violence class after his treatment at CenterPointe, this never materialized because he never completed the CenterPointe program.

With regard to finding a suitable home, Shults testified that she reviewed with Father a list of locations where he could look for housing. The trial court noted that "[a]t various times he told the children's case manager that he had found housing but none of those leads came through . . . ." At other times, when she talked with him about housing, Father told Shults that he was looking or that he needed to first pay off some bills. At the hearing, Father conceded that he understood the plan's statement of his responsibilities, knew what he had to do, and failed to do it. As the trial court ultimately found, Father had options, but failed to pursue them. Father admitted as much when he was asked whether he felt DCS made reasonable efforts to help him meet the objectives of the permanency plan:

> [Father]: I believe the only reasonable thing that was accomplished was the help with the domestic violence, which I never got to attend, of course. Other than that, they just give me paperwork and I had to go do it myself. I mean, there was no other kind of – I think I might have got a bus pass a couple of times. But other than that, no.
>
> [Q]: What do you think the Department could have done different to help you overcome some of these problems?
>
> [Father]: Just if there was some type of grants or money or funding that they might have had that could have got me into some of these other treatment programs that they were so adamant about me getting

> into. Of course, that would have helped me get a lot of things accomplished. But I'm not going to say it's their fault. I'm not going to put it on them. I mean, there's some things I could have done more, of course. But I done the best I could with what I was given.

This court has observed that often "the success of a parent's remedial efforts is intertwined with the efforts of the Department's staff to provide assistance and support." ***In re C.M.M. & S.D.M.***, M2003-01122-COA-R3-PT, 2004 WL 438326 at * 7 (Tenn. Ct. App. March 9, 2004) (citing ***State v. Demarr***, M2002-02603-COA-R3-JV, 2003 WL 21946726, at *10). The remedial efforts, however, rest squarely, but not solely, upon the Department. "Parents must also make reasonable efforts to rehabilitate themselves and to remedy the conditions that required them to be separated from their children." ***Id***. (citing ***In re R.C.V.***, W2001-2102-COA-R3-JV, 2002 WL 31730899, at * 12 (Tenn. Ct. App. filed Nov. 18, 2002)). The evidence does not preponderate against the trial court's findings that DCS made reasonable efforts to assist Father in reunifying with his Children.

VI.

Having concluded that there was clear and convincing evidence supporting each of the statutory grounds relied upon to terminate Father's parental rights, we must consider whether clear and convincing evidence also supports the trial court's conclusion that it was in the best interest of

the Children to terminate Father's parental rights. To this end, we are guided by the non-exclusive list of factors provided in Tenn. Code Ann. § 36-1-113.[6]

In the present case, the trial court found as follows:

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[6]Tenn. Code Ann. § 36-1-113(I) provides as follows:

> (I) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:
>
> > (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
> >
> > (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
> >
> > (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
> >
> > (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
> >
> > (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
> >
> > (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
> >
> > (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
> >
> > (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
> >
> > (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

> [Father] has not made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the children's best interest to be in his home despite reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible. Indeed, [Father] is currently incarcerated and has no home. A change of caretakers and physical environment from the only stability they have ever had is likely to have a detrimental effect on the children's emotional, psychological and medical condition. [Father] continues to engage in such use of alcohol or controlled substances as may render him consistently unable to care for the children in a safe and stable manner. And has not paid child support consistent with the child support guidelines . . . .
>
> * * *
>
> [DCS] has made reasonable efforts toward achieving permanency for these children.
>
> The children are entitled to a safe, secure and loving home. Every child wants to go home, but his Court has learned that uncertainty is the biggest horror for children. These children now have a chance for permanency through adoption in their current foster home. Their foster mother testified that "these are great kids, we would be proud to offer them our home." Of course they love their parents, but they know the circumstances surrounding these proceedings. They want [Father] to straighten up and stay out of trouble; they don't understand why he does "stupid stuff." These children are thriving now. They are doing much better in school than they did before. They are happy and ready to move on with their lives.
>
> It is, therefore, in the best interest of [the children] and the public that all of [Father's] parental rights to these children be terminated. . . .

In Father's favor, the proof showed that Father regularly visited the Children and appeared to have a meaningful relationship with them despite his admitted failure to parent them properly. Father urged that he be given another chance to become a good parent and change his ways. The trial court, however, found that the great bulk of the evidence clearly and convincingly demonstrated that it was in the Children's best interest to terminate Father's parental rights. The evidence does not preponderate against the trial court's findings. We are mindful that the determination of best interest should be considered from the perspective of the [child], not the parent. ***In re Giorgianna H.***, 205 S.W.3d 508, 523 (Tenn. Ct. App. 2006) (citations omitted). In this case, even the testimony of the one child who attended the termination hearing supports the trial court's decision to terminate Father's rights. Kenneth, Jr. testified that his visits with Father were "great" and he wanted them to continue, but ultimately concluded that the termination proceeding "was the best thing for me." On the record before us, we must agree.

VII.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Kenneth W. This case is remanded to the trial court, pursuant to applicable law, for enforcement of the court's judgment and for the collection of costs assessed below.

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CHARLES D. SUSANO, JR., JUDGE